

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Opoku-Agyemang	Team: Team # 5	CCRB Case #: 201007086	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/26/2010 9:15 AM	Location of Incident: § 87(2)(b)	Precinct: 46	18 Mo. SOL 11/26/2011	EO SOL 11/26/2011	
Date/Time CV Reported Wed, 05/26/2010 9:17 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 05/26/2010 9:17 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Elisha Duncan	03073	926793	046 PCT
2. POM Harry Delacruz	20377	941272	046 PCT
3. POM Orlando Colon	26399	940992	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Elisha Duncan	Abuse: PO Elisha Duncan stopped § 87(2)(b)	§ 87(2)(b)
B.POM Harry Delacruz	Abuse: PO Harry De La Cruz stopped § 87(2)(b)	§ 87(2)(b)
C.POM Orlando Colon	Abuse: PO Orlando Colon stopped § 87(2)(b)	§ 87(2)(b)
D.POM Elisha Duncan	Discourtesy: PO Elisha Duncan spoke obscenely and/or rudely to § 87(2)(b)	§ 87(2)(b)
E.POM Elisha Duncan	Abuse: PO Elisha Duncan threatened to arrest § 87(2)(b)	§ 87(2)(b)
F.POM Harry Delacruz	Abuse: PO Harry De La Cruz frisked § 87(2)(b)	§ 87(2)(b)
G.POM Harry Delacruz	Abuse: PO Harry De La Cruz searched § 87(2)(b)	§ 87(2)(b)

Case Summary

On May 26, 2010, § 87(2)(b) contacted the CCRB by telephone and filed a complaint (Encl. 2A-B).

At approximately 9:15 a.m. on May 26, 2010, § 87(2)(b) was stopped in the courtyard of § 87(2)(b) in the Bronx by PO Harry De La Cruz, PO Elisha Duncan, and PO Orlando Colon. The following allegations resulted:

- **Allegation A – Abuse of Authority – PO Elisha Duncan stopped** § 87(2)(b)
- **Allegation B – Abuse of Authority – PO Harry De La Cruz stopped** § 87(2)(b)
- **Allegation C – Abuse of Authority – PO Orlando Colon stopped** § 87(2)(b)
- **Allegation D – Abuse of Authority – PO Elisha Duncan spoke obscenely and/or rudely to** § 87(2)(b)
- **Allegation E – Abuse of Authority – PO Elisha Duncan threatened to arrest** § 87(2)(b)
- **Allegation F – Abuse of Authority – PO Harry De La Cruz frisked** § 87(2)(b)
- **Allegation G – Abuse of Authority – PO Harry De La Cruz searched** § 87(2)(b)

§ 87(2)(g)

On June 11, 2010, § 87(2)(b) chose to mediate this complaint and it was forwarded to the Mediation Unit. However, on July 2, 2010, § 87(2)(b) stated that he was no longer interested in mediating his complaint (Encl. 8C). The case was returned to the Investigative Unit on July 20, 2010.

Results of Investigation

Civilian Statement(s)

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a 5'10" tall, 260 pound, § 87(2)(b)-old black male with brown hair and hazel eyes. § 87(2)(b)

CCRB Complaint

On May 26, 2010, § 87(2)(b) called the CCRB to file a complaint (Encl. 2A-B). On June 7, 2010, § 87(2)(b) contacted the CCRB in response to previous attempts to contact him and provided a telephone statement (Encl. 2C). The statements were consistent and have been combined below, with any inconsistencies noted.

§ 87(2)(b) was walking towards the building where he resides when an officer, whose name § 87(2)(b) knew as PO "Duncan" from previous encounters, called him. This officer was identified by the investigation as PO Elisha Duncan. PO Duncan asked § 87(2)(b) where he lived and § 87(2)(b) told him. PO Duncan began to search § 87(2)(b)'s pockets, at which time § 87(2)(b) told PO Duncan that he had not given him permission to search his pockets. In his initial statement § 87(2)(b) stated that PO Duncan said, "Shut the fuck up" and then "I'll lock you up for the hell of it." In his telephone statement

he stated that PO Duncan said, “Shut the hell up.” In his initial complaint § 87(2)(b) also stated that he tried to call the CCRB during the incident and was told by PO Duncan to “put the fucking phone away.”

CCRB Testimony

On July 29, 2010, § 87(2)(b) was interviewed at the CCRB (Encl. 3A-D).

At approximately 9:15 AM on May 26, 2010, § 87(2)(b) exited the garage of his apartment building and began walking towards the front entrance of the building, located at § 87(2)(b) in the Bronx. As he was walking, § 87(2)(b) saw an unmarked black Ford sedan pull up in front of the building. At the same time § 87(2)(b) saw two of his friends, who he only knew by the nicknames § 87(2)(b) and § 87(2)(b) sitting on a bench in the courtyard in front of the building. § 87(2)(b) and § 87(2)(b) called § 87(2)(b) over and he turned towards them to speak to them. Someone from inside the unmarked car said, “You, come here.” § 87(2)(b) turned back to the car and walked towards it.

Inside the car § 87(2)(b) saw three uniformed police officers: The driver, who he described as an approximately 5’6” to 5’7” black male in his late 20s or early 30s with braided hair and a medium build, was identified by the CCRB as PO Elisha Duncan; the rear passenger, an approximately 6’2” dark-skinned Hispanic male in his mid-to-late 20s with a slim build, was identified by the CCRB as Harry De La Cruz; and the front passenger, an approximately 5’8” light-skinned Hispanic male in his late 20s with a stocky build, was identified by the CCRB as PO Orlando Colon. PO De la Cruz asked him, “Do you live here?” § 87(2)(b) stated that he did, turned around, and began to walk away from the officers towards the entrance of his building. The officers exited the marked car and walked after § 87(2)(b). PO Duncan asked him where he was going and § 87(2)(b) replied that he was going into the building. PO De La Cruz asked § 87(2)(b) for his ID and PO § 87(2)(b) replied, “What am I being stopped for?” PO Duncan said to him, “Shut the fuck up,” and then to PO De La Cruz, “If he don’t shut up put the cuffs on him.” § 87(2)(b) asked why they would arrest him and PO Duncan replied, “Shut the fuck up.” § 87(2)(b) gave his ID to the officers and sat down on a bench while the officers returned to their car.

PO De La Cruz returned with § 87(2)(b)’s ID and patted down § 87(2)(b)’s pants pockets. PO Duncan then told PO De La Cruz to search § 87(2)(b). PO De La Cruz proceeded to put his hands inside § 87(2)(b)’s pockets. § 87(2)(b) asked the officers why they were searching him and PO Duncan said to PO De La Cruz, “Put the cuffs on him if he don’t comply,” and then said to § 87(2)(b) “I can do whatever the fuck I want to do.” § 87(2)(b) and § 87(2)(b) told § 87(2)(b) to calm down and let the officer search him. § 87(2)(b) calmed down and let PO De La Cruz search his pockets.

§ 87(2)(b) stated that he had had prior interactions with PO Duncan and knew him by name. He stated that during the time between this incident and his CCRB interview he had had interactions with PO De La Cruz and during which he observed his name.

Attempts to Contact Civilians

§ 87(2)(b) provided the nicknames of two witnesses as § 87(2)(b) and § 87(2)(b). At his CCRB interview § 87(2)(b) could not provide any contact information for § 87(2)(b) or § 87(2)(b) but promised to obtain this information and contact the CCRB. § 87(2)(b) did not contact the CCRB and on September 2, 2010, the CCRB contacted § 87(2)(b). He stated that he had not obtained either the names or contact information for § 87(2)(b) and § 87(2)(b). Again he promised to obtain the contact information and transmit them to the CCRB and, if possible, to provide the assigned investigator’s contact information to the two witnesses. § 87(2)(b) has not contacted the CCRB and neither has anyone identifying themselves as a witness to this incident.

NYPD Statement(s):

Subject Officer: PO ELISHA DUNCAN

- PO Duncan is a § 87(2)(b)-old 5'6", 175 pound, black male with black braided hair and brown eyes.
- On May 26, 2010, PO Duncan worked in the 46th Precinct and was partnered with PO Harry De La Cruz and assigned to RMP 8161 as part of a SNEU team. He worked from 7:00 a.m. to 3:35 p.m. and was uniformed.

Subject Officer: PO HARRY DE LA CRUZ

- PO De La Cruz is a § 87(2)(b)-old, 6'3" tall, 180 pound, Hispanic male with black hair and black eyes.
- On May 26, 2010, PO De La Cruz worked in the 46th Precinct and was partnered with PO Orlando Colon and assigned to an unmarked Chevy Impala as the chase car in a SNEU team. He worked from 7:00 a.m. to 3:35 p.m. and was uniformed.

Subject Officer: PO ORLANDO COLON

- PO Colon is a § 87(2)(b)-old 5'10" tall, 190 pound, Hispanic male with a bald head and brown eyes.
- PO Colon worked from 7:00 a.m. to 3:35 p.m. on May 26, 2010, with PO Harry De La Cruz. They were uniformed and assigned to a SNEU team in a marked patrol car.

Memo Book

PO Duncan has no memo book entries regarding this incident (Encl. 4A). PO De La Cruz has no memo book entries regarding this incident (Encl. 4D-E). PO Colon has no memo book entries regarding this incident (Encl. 4H-J).

CCRB Testimony

On August 26, 2010, PO Duncan was interviewed at the CCRB (Encl. 4B-C); on September 2, 2010, PO De La Cruz was interviewed at the CCRB (Encl. 4F-G); on November 4, 2010, PO Colon was interviewed at the CCRB (Encl. 4K-L).

None of the three officers had any recollection of having stopped § 87(2)(b) or any individuals in the vicinity of § 87(2)(b) on May 26, 2010. PO Duncan and PO Colon did not recognize photographs of § 87(2)(b). PO De La Cruz recognized § 87(2)(b) but from a separate incident.

PO Duncan stated that his partner on May 26, 2010 was PO De La Cruz and did not recall having a third officer inside their car at any point during the tour.

PO De La Cruz stated that his partner on May 26, 2010 was PO Colon and did not recall having had PO Duncan with them at any point in the day.

PO Colon stated that his partner on May 26, 2010 was PO De La Cruz and did not recall having had PO Duncan with them at any point in the day.

NYPD Document(s)

UF250 Stop and Frisk Logs

- The UF250 log (Encl. 5A), covering the 46th Precinct from 6:00 a.m. to 6:00 p.m. on May 26, 2010, show no stop and frisk reports filed for stops of § 87(2)(b) or any unidentified individuals.

46th Precinct Roll Call

- The tour 2 Roll Call for the 46th Precinct on May 26, 2010, (Encl. 5B-C), indicates that PO Orlando Colon and PO Elisha Duncan were partnered in the SNEU team in vehicle #8610. PO Harry De La Cruz had court date at the Bronx District Attorney's office.

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York with regards to this incident as of October 19, 2010 (Encl. 8F).

Civilian(s) Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
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[REDACTED]

Civilian(s) CCRB History

- § 87(2)(b) has filed the following CCRB complaints (Encl. 1H):
 - § 87(2)(b)
■ [REDACTED]

- In his initial CCRB statement, § 87(2)(b) alleged that PO Duncan was the officer who searched him. However, in his official statement, § 87(2)(b) stated that PO De La Cruz was the officer who searched him. § 87(2)(g)

Investigative Findings and Recommendations

Allegation A – Abuse of Authority – PO Elisha Duncan stopped § 87(2)(b)

Allegation B – Abuse of Authority – PO Harry De La Cruz stopped § 87(2)(b)

Allegation C – Abuse of Authority – PO Orlando Colon stopped § 87(2)(b)

Allegation D – Abuse of Authority – PO Elisha Duncan spoke obscenely and/or rudely to

§ 87(2)(b)

Allegation E – Abuse of Authority – PO Elisha Duncan threatened to arrest § 87(2)(b)

Allegation F – Abuse of Authority – PO Harry De La Cruz frisked § 87(2)(b)

Allegation G – Abuse of Authority – PO Harry De La Cruz searched § 87(2)(b)

None of the three officers recalled having had any interactions with § 87(2)(b) on May 26, 2010, or with any individuals at § 87(2)(b) on that day. § 87(2)(g)

Team: 5

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Investigator: _____ Alexander Opoku-Agyemang January 11, 2011
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

